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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO,
individually and on behalf of all similarly
situated,

Plaintiffs,

v.

GOOGLE LLC,
Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**GOOGLE LLC'S ADMINISTRATIVE
MOTION TO SEAL PORTIONS OF
JOINT SUBMISSION IN RESPONSE TO
DKT. 242, 242-1 RE: CUSTODIANS AND
SEARCH TERMS**

Referral: Hon. Susan van Keulen, USMJ

I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5, Defendant Google LLC (“Google”) respectfully seeks to seal certain portions of the parties’ Joint Submission in Response to Dkt. 242, 242-1 Re: Custodians And Search Terms (“Joint Submission”), which contains non-public, sensitive confidential and proprietary business information that could affect Google’s competitive standing and may expose Google to increased security risks if publicly disclosed. This information is highly confidential and should be protected. This Court has previously sealed the same or substantively similar information, including in Dkt. Nos. 143, 152, 160, 172, 174, 183, 190, 197, 226, 238, 240.

This Administrative Motion pertains for the following information contained in the Joint Submission:

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality
Joint Submission	Portions Highlighted in Yellow at pages: 3, 4	Google

II. LEGAL STANDARD

A party seeking to seal material must “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, is “sealable”). Civ. L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.*

In the context of dispositive motions, materials may be sealed in the Ninth Circuit upon a showing that there are “compelling reasons” to seal the information. *See Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006). However, a party seeking to seal information in a non-dispositive motion must show only “good cause.” *Id.* at 1179-80. The rationale for the lower standard with respect to non-dispositive motions is that “the public has less of a need for access to court records attached only to non-dispositive motions because these documents are often unrelated, or only tangentially related, to the underlying cause of action” and that as a result “[t]he public policies that support the right of access to dispositive motions, and related materials, do not apply with equal force to non-dispositive materials.” *Kamakana*, 447 F.3d at 1179; *see also TVIIM, LLC v.*

1 *McAfee, Inc.*, 2015 WL 5116721, at *1 (N.D. Cal. Aug. 28, 2015) (“Records attached to non-
 2 dispositive motions are not subject to the strong presumption of access.”) (citation omitted). Under
 3 the “good cause” standard, courts will seal statements reporting on a company’s users, sales,
 4 investments, or other information that is ordinarily kept secret for competitive purposes. *See*
 5 *Hanginout, Inc. v. Google, Inc.*, 2014 WL 1234499, at *1 (S.D. Cal. Mar. 24, 2014); *Nitride*
 6 *Semiconductors Co. v. RayVio Corp.*, 2018 WL 10701873, at *1 (N.D. Cal. Aug. 1, 2018) (granting
 7 motion to seal “[c]onfidential and proprietary information regarding [Defendant]’s products” under
 8 “good cause” standard) (Van Keulen, J.). Although the materials that Google seeks to seal here easily
 9 meet the higher “compelling reasons” standard, the Court need only consider whether these materials
 10 meet the lower “good cause” standard.

11 **III. THE ABOVE IDENTIFIED MATERIALS SHOULD ALL BE SEALED**

12 Courts have repeatedly found it appropriate to seal documents that contain “business
 13 information that might harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns, Inc.*, 435
 14 U.S. 589, 589-99 (1978). Good cause to seal is shown when a party seeks to seal materials that
 15 “contain[] confidential information about the operation of [the party’s] products and that public
 16 disclosure could harm [the party] by disclosing confidential technical information.” *Digital Reg. of*
 17 *Texas, LLC v. Adobe Sys., Inc.*, 2014 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Materials that
 18 could harm a litigant’s competitive standing may be sealed even under the “compelling reasons”
 19 standard. *See, e.g., Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, 2015 WL 984121, at *2
 20 (N.D. Cal. Mar. 4, 2015) (information “is appropriately sealable under the ‘compelling reasons’
 21 standard where that information could be used to the company’s competitive disadvantage”) (citation
 22 omitted). Courts in this district have also determined that motions to seal may be granted as to
 23 potential trade secrets. *See, e.g., United Tactical Sys., LLC v. Real Action Paintball, Inc.*, 2015 WL
 24 295584, at *3 (N.D. Cal. Jan. 21, 2015) (rejecting argument against sealing “that [the party] ha[s] not
 25 shown that the substance of the information . . . amounts to a trade secret”).

26 Here, the Joint Submission comprises confidential and proprietary information regarding
 27 highly sensitive features of Google’s internal systems and operations that Google does not share
 28 publicly. Specifically, this information provides details related to internal cookies, identifiers, and

1 projects, and their proprietary functions, as well as Google’s internal communications and practices
2 with regard to Incognito. Such information reveals Google’s internal strategies, system designs, and
3 business practices for operating and maintaining many of its important services while complying with
4 its legal and privacy obligations.

5 Public disclosure of the above-listed information would harm Google’s competitive standing it
6 has earned through years of innovation and careful deliberation, by revealing sensitive aspects of
7 Google’s proprietary systems, strategies, and designs to Google’s competitors. That alone is a proper
8 basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-02329-
9 BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal certain sensitive
10 business information related to Google’s processes and policies to ensure the integrity and security of
11 a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-02787-WHO,
12 Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because “disclosure
13 would harm their competitive standing by giving competitors insight they do not have”); *Trotsky v.*
14 *Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8, 2013) (granting motion to seal
15 as to “internal research results that disclose statistical coding that is not publically available”).

16 Moreover, if publicly disclosed, malicious actors may use such information to seek to
17 compromise Google’s internal identifier systems, projects, and practices. Google would be placed at
18 an increased risk of cyber security threats. *See, e.g., In re Google Inc. Gmail Litig.*, 2013 WL
19 5366963, at *3 (N.D. Cal. Sept. 25, 2013) (sealing “material concern[ing] how users’ interactions with
20 the Gmail system affects how messages are transmitted” because if made public, it “could lead to a
21 breach in the security of the Gmail system”). The security threat is an additional reason for this Court
22 to seal the identified information.

23 The information Google seeks to redact, including internal cookies, identifiers, and projects,
24 and their proprietary functions, as well as internal communications and practices with regard to
25 Incognito, is the minimal amount of information needed to protect its internal systems and operations
26 from being exposed to not only its competitors but also to nefarious actors who may improperly seek
27 access to and disrupt these systems and operations. The “good cause” rather than the “compelling
28 reasons” standard should apply but under either standard, Google’s sealing request is warranted.

1 **IV. CONCLUSION**

2 For the foregoing reasons, the Court should seal the identified portions of Joint Submission.

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4 DATED: August 24, 2021

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